

2005-06 HONOLULU CHARTER COMMISSION
CHARTER AMENDMENT PROPOSAL FORM

1. Provide a brief description of the purpose of the proposed charter amendment; include a description of the problem the proposal would address and how the proposal would address the problem:

As a housekeeping matter, propose deletion of Charter Section 6-1608 entitled "Political Activities Prohibited" that prohibits political activities by police department employees. Section 6-608, 1973 Revised Charter of the City and County of Honolulu (1994 Ed.) was ruled unconstitutional in SHOPO v. City, First Circuit Court, Civil No. 96-3234-08. Under the terms of the Stipulation of Settlement, the Department of the Corporation Counsel was to propose a charter amendment to repeal the charter provision. Former Charter Section 6-608 now appears as Section 6-1608, 1973 Revised Charter of the City and County of Honolulu (2000 Ed.)

2. If applicable, list the charter provision(s) proposed to be deleted or amended:

Section 6-1608.

3. If the proposal is based on a provision or provisions in the charter or law of another jurisdiction, name the jurisdiction and, if possible, attach a copy of the relevant provision(s).

N/A

4. If the proposal is based on any written materials you have, please attach a copy with a citation to its source.

A copy of the Stipulation of Settlement is attached.

5. Attach the text of the proposed charter amendment in Ramseyer format (see below).

Ramseyer Format:

If proposing an amendment to existing Charter provisions, indicate, by underscoring, any language being proposed to be added to the Charter and indicate, by bracketing, any language being proposed to be deleted from the Charter.

If proposing to replace existing Charter provisions in their entirety, clearly indicate the article(s), chapter(s) and/or section(s) of the Charter proposed to be deleted, and provide the text of any provisions proposed to replace the deleted material.

If proposing new Charter material only, provide the text of the new provision(s) and, if possible, indicate where in the Charter the new material should be inserted.

[Section 6-1608. Political Activities Prohibited --

Except for exercising the right to vote, no member of the police department shall support, advocate or aid in the election or defeat of any candidate for public office. Any violation of this section of the charter by a member of the department shall be cause for summary dismissal from the department.³¹

³¹Prohibition ruled unconstitutional by the First Circuit Court in Civil No. 96-3234-08, SHOPO v. City and County of Honolulu, et al.; decision not appealed by City.]

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Attorney for Plaintiff

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1996 AUG 28 AM 9:48

B. CHO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

STATE OF HAWAII, ORGANIZATION)
OF POLICE OFFICERS (SHOPO), a)
non-profit corporation,)
Plaintiff,)

vs.)

CITY AND COUNTY OF HONOLULU,)
a municipal corporation;)
JEREMY HARRIS, in his)
official capacity as Mayor of)
the City and County of)
Honolulu; CYNTHIA BOND, in)
her official capacity as the)
Director of the Department of)
Personnel of the City and)
County of Honolulu; and)
MICHAEL S. NAKAMURA, in his)
official capacity as Chief of)
the Honolulu Police)
Department, City and County)
of Honolulu,)
Defendants.)

CIVIL NO. 96-3234-08
(Declaratory Judgments)

STIPULATION OF SETTLEMENT

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

STIPULATION OF SETTLEMENT

By agreement of the parties, through their undersigned counsel, the following Stipulation of Settlement shall be submitted for approval by the Court to finally resolve the issues being litigated in State of Hawaii Organization of Police Officers (SHOPO) v. City and County of Honolulu, et al., Civil No. 96-3234-08. The parties herein waive hearing and agree as provided in the General Stipulations and Specific Stipulations set forth below:

I. GENERAL STIPULATIONS

A. Plaintiff SHOPO filed this action on August 6, 1996 against the City and County of Honolulu, Jeremy Harris, Cynthia Bond and Michael Nakamura, in their respective official capacities as Mayor, Director of the Department of Personnel and Chief of the Honolulu Police Department, seeking a declaration that Section 6-608 of the Revised Charter of Honolulu is unconstitutional as violative of SHOPO's members' freedom of speech and association in denying them the right to support, advocate or aid in the election or defeat of any candidate for political office. SHOPO seeks to enjoin the enforcement of the Charter provision at issue.

B. Although not binding upon the State of Hawaii and on the Defendants herein, similar laws prohibiting law enforcement officers from engaging in political activities have been held unconstitutional in both federal and state courts. See, Oregon State Police Officers Ass'n v. State, 766 P.2d 408, cert. denied,

112 L.Ed 20, later proceedings & aff'd in part & rev'd in part on other grounds, 783 P.2d 7 (Or. 1988) (a nearly identical provision to the Charter provision at issue was held to be overbroad and violative of equal protection by restricting police officers over other public employees including other law enforcement officers employed in government service); Ruff v. City of Leavenworth, 858 F.Supp 1546 (D.Kansas 1994) (the court struck down as facially overbroad and impermissibly vague a prohibition restricting members of the fire and police departments of Leavenworth engaging in political activities).

C. By this Stipulation of Settlement, SHOPO and Defendants herein seek to finally resolve all of the claims and controversies presented in the instant action expeditiously and with minimum expense.

D. Through this Stipulation of Settlement, SHOPO and Defendants herein seek to effect a full and final compromise and settlement of any and all issues, disputes, claims, differences and causes of action arising out of facts and claims asserted in the complaint filed in the instant action, in a manner to preclude further litigation of all such issues, disputes, claims, differences and causes of action.

II. SPECIFIC STIPULATIONS

A. Section 6-608 of the Revised Charter of Honolulu (1994 edition) (RCH) is unconstitutional and unenforceable under the First and Fourteenth Amendments of the United States Constitution.

B. Defendants herein shall be enjoined from enforcing RCH Section 6-608 and Section VII C 14 of the Honolulu Police Department Standards of Conduct, which implements RCH Section 6-608, on any members of SHOPO.

C. Upon the dismissal of this action, Defendants herein, through the Department of the Corporation Counsel, shall submit a proposal for a Charter Amendment to repeal RCH Section 6-608 to the City Council for consideration and appropriate action.

D. Defendants herein shall pay SHOPO's attorney's fees and cost in the amount of Two thousand seven hundred sixty-eight and 20/100 Dollars ^{DRF} (\$ 2,768 ²⁰/₁₀₀) upon the execution of this Stipulation of Settlement by counsel for both Plaintiff and Defendants, and approval of this Stipulation of Settlement by the Court.

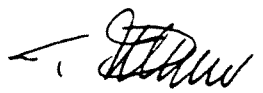
E. SHOPO and Defendants herein release and forever discharge each other and their respective successors, heirs, representatives, employees, officers, assigns, designees and agents from and of all manner of actions, demands, proceedings, claims, rights, liability, damages or expense of any kind (other than attorney's fees and court costs), whether known or unknown, whether in law or equity, involving, related to, arising or growing out of, or incident to the issues, disputes, claims, differences and causes of action arising under the complaint in this action, except as may arise under this Stipulation of Settlement.

F. This Stipulation of Settlement fully incorporates the entire agreement of the parties. No other conditions, relief or consideration are outstanding.

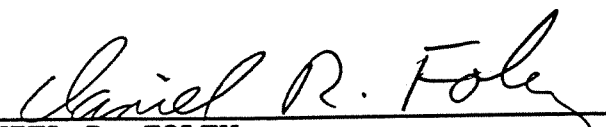
G. This Stipulation of Settlement is made by the parties with full knowledge of the facts and legal implications of the claims, demands, disputes and causes of action, and shall bind the parties and be enforceable as an Order of this Court even though the facts with respect to which this Stipulation of Settlement is made hereafter prove to be other than or different from facts known by them.

H. Upon execution of this Stipulation of Settlement by counsel for both Plaintiff and Defendants and approval of this Stipulation of Settlement by this Court, the Complaint filed in State of Hawaii Organization of Police Officers (SHOPO) v. City and County of Honolulu, et al., Civil No. 96-3234-08, shall be dismissed with prejudice.

DATED: Honolulu, Hawaii, August 28, 1996.

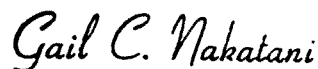


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Attorneys for Defendants



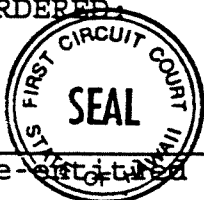
DANIEL R. FOLEY
Attorney for Plaintiff

APPROVED AND SO ORDERED:



Gail C. Nakatani

Judge of the above-entitled Court



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